

AMENDED IN SENATE APRIL 28, 1998

AMENDED IN SENATE APRIL 13, 1998

**SENATE BILL**

**No. 2231**

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**Introduced by Committee on Revenue and Taxation  
(Senators Alpert (Chair), Greene, Karnette, Lee, and  
McPherson)**

March 3, 1998

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An act to amend Section 25174.6 of the Health and Safety Code, and to amend Sections 41052.1, 43452, 43522, 50157, 60501, and 60503 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 2231, as amended, Committee on Revenue and Taxation. Taxation: fuel taxes: hazardous waste.

Existing law requires the State Board of Equalization, upon the request of the Department of Toxic Substances Control, to adjust hazardous waste disposal fees to reflect changes in the cost of living during the prior calendar year.

The bill would instead eliminate the requirement for the request to be made by the Department of Toxic Substances Control, and would require the State Board of Equalization to adjust the rates based on the cost of living for the prior fiscal year.

Existing law provides for refunds for overpayments of hazardous waste disposal fees.

This bill would revise the claims procedures for these overpayments by providing that any overpayment of the

disposal fee by a person submitting hazardous waste for disposal to a facility operator will be credited or refunded by the State Board of Equalization to the person doing the submission and would permit the hazardous waste facility to receive the credit or refund if the facility has paid the amount to the board and meets specified conditions.

The Emergency Telephone Users Surcharge Act permits the State Board of Equalization, if it deems it necessary, to require returns and payments of tax under that act to be made for quarterly periods other than calendar quarters, or for multiples of quarterly periods.

This bill would permit the board to require the returns and payment of the amount of surcharges for a calendar quarter or calendar year period.

Under the Diesel Fuel Tax Law, persons who have paid a tax on diesel fuel that was used in a nontaxable manner may be entitled to a refund under specified conditions. Refunds under that law may also be claimed by an ultimate vendor who sold the diesel fuel without collecting tax to a farmer or exempt bus operator if the vendor receives an exemption certificate from the purchaser.

This bill would clarify the refund provisions for diesel fuel that is lost or sold under specified conditions, and would require the exemption certificate for farmers or bus operators to be in the form prescribed by the State Board of Equalization.

The bill would also make various technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 25174.6 of the Health and Safety
- 2 Code is amended to read:
- 3 25174.6. (a) The fee provided in Section 25174.1 shall
- 4 be calculated pursuant to the requirements of this section
- 5 with regard to the manner in which the hazardous waste
- 6 exists at the time of disposal in this state. The following
- 7 procedures shall be used for determining these fees, if the



1 hazardous waste is not otherwise exempt from the fees  
2 imposed pursuant to this article:

3 (1) For RCRA hazardous wastes generated in a  
4 remedial action, a removal action, or a corrective action  
5 taken pursuant to this chapter, Chapter 6.7 (commencing  
6 with Section 25280), Chapter 6.75 (commencing with  
7 Section 25299.10), or Chapter 6.8 (commencing with  
8 Section 25300), or generated in any other required or  
9 voluntary cleanup, removal, or remediation of a  
10 hazardous substance or RCRA hazardous waste, the  
11 following fees shall be paid for each ton, or fraction  
12 thereof, of hazardous waste disposed of in this state:

13 (A) Except as provided in subparagraph (B), for  
14 RCRA hazardous waste that is disposed of in compliance  
15 with land disposal restriction treatment standards  
16 adopted by the Environmental Protection Agency in Part  
17 268 (commencing with Section 268.1) of Title 40 of the  
18 Code of Federal Regulations at the time of disposal, a fee  
19 of twenty-two dollars (\$22) per ton.

20 (B) For RCRA hazardous waste subject to this  
21 paragraph that is treated so that the waste is no longer a  
22 RCRA hazardous waste at the time of disposal, the  
23 following fees shall be paid:

24 (i) For waste that is a non-RCRA hazardous waste, a  
25 fee of four dollars (\$4) per ton.

26 (ii) For waste that is no longer a hazardous waste, a fee  
27 of one dollar and fifty cents (\$1.50) per ton.

28 (2) For all other RCRA hazardous waste not subject to  
29 paragraph (1), the following fees shall be paid for each  
30 ton, or fraction thereof, of hazardous waste, disposed of in  
31 this state:

32 (A) If the RCRA hazardous waste is disposed of in  
33 compliance with land disposal restriction treatment  
34 standards adopted by the Environmental Protection  
35 Agency in Part 268 (commencing with Section 268.1) of  
36 Title 40 of the Code of Federal Regulations at the time of  
37 disposal, a fee of thirty-two dollars (\$32) shall be paid per  
38 ton.

(B) If the RCRA hazardous waste is treated so that the waste is no longer a RCRA hazardous waste at the time of disposal, the following fees shall be paid:

(i) For waste that is a non-RCRA hazardous waste, a fee of twelve dollars and fifty cents (\$12.50) per ton.

(ii) For waste that is no longer a hazardous waste, a fee of one dollar and fifty cents (\$1.50) per ton.

(3) The following fees shall be paid for each ton, or fraction thereof, for up to the first 5,000 tons, of the following hazardous wastes disposed of, or submitted for disposal, in this state, at each specific offsite facility by each producer, or at each specific onsite facility per month, if the hazardous wastes are not otherwise subject to the fee specified in paragraph (5):

(A) For a hazardous waste that is a non-RCRA hazardous waste at the time of disposal, other than asbestos, that is generated in a remedial action, a removal action, or a corrective action taken pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), or generated in any other required or voluntary cleanup, removal, or remediation of a hazardous substance or non-RCRA hazardous waste, a fee of one dollar (\$1) per ton.

(B) For all other hazardous wastes that are non-RCRA hazardous waste at the time of disposal, a fee of ten dollars and fifty cents (\$10.50) per ton.

(4) For each ton, or fraction thereof, for up to the first 5,000 tons of hazardous waste disposed of, or submitted for disposal, in this state, at each specific offsite facility by each producer, or at each specific onsite facility, per month, that results from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and the overburden from the mining of uranium ore, and which is not otherwise subject to the fee specified in paragraph (5), a fee of ten dollars and fifty cents (\$10.50) per ton.

(5) A fee of two hundred dollars (\$200) per ton shall be paid for each ton, or fraction thereof, of the following types of hazardous wastes disposed of in this state:

(A) Hazardous waste that is extremely hazardous waste at the time of disposal.

(B) Hazardous waste that is a restricted hazardous waste listed in subdivision (b) of Section 25122.7 at the time of disposal.

(6) (A) Four dollars (\$4) shall be paid for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in this state, that is a solid hazardous waste residue resulting from incineration or dechlorination.

(B) No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from incineration or dechlorination that is disposed of, or submitted for disposal, outside this state.

(b) The amount of fees payable to the State Board of Equalization pursuant to this section shall be calculated using the total wet weight, measured in tons or fractions thereof, of the hazardous waste in the form in which the hazardous waste exists at the time of disposal, or application to land using a land disposal method, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1998. However, the weight of any nonhazardous reagents or treatment additives added to the hazardous waste, after it has been submitted for disposal, for purposes of rendering the hazardous waste less hazardous, shall not be included in those calculations.

(c) All fees imposed pursuant to this section shall be paid in accordance with part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(d) The disposal fee rates specified in this section shall be the rates for the period of January 1, 1998, to December 31, 1998. Beginning with calendar year 1999, and for each year thereafter, the State Board of Equalization shall adjust those rates to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by

1 the Department of Industrial Relations or a successor  
2 agency.

3 (e) This section shall become operative on January 1,  
4 1998, and shall remain in effect only until January 1, 2001,  
5 and as of that date is repealed, unless a later enacted  
6 statute, that is enacted before January 1, 2001, deletes or  
7 extends that date.

8 SEC. 2. Section 41052.1 of the Revenue and Taxation  
9 Code is amended to read:

10 41052.1. If the board deems it necessary in order to  
11 ensure payment or to facilitate the collection by the state  
12 of the amount of taxes, the board may require returns and  
13 payment of the amount of surcharges for a calendar  
14 quarter or calendar year period.

15 SEC. 3. Section 43452 of the Revenue and Taxation  
16 Code is amended to read:

17 43452. (a) Except as provided in subdivisions (b),  
18 (e), and (f), no refund shall be approved by the board  
19 after three years from the date the taxes were due and  
20 payable for the period for which the overpayment was  
21 made, or, with respect to determinations made under  
22 Article 2 (commencing with Section 43201) of Chapter 3,  
23 after six months from the date the determinations  
24 become final, or after six months from the date of  
25 overpayment, whichever period expires later, unless a  
26 claim therefor is filed with the board within that period.  
27 Except as provided in subdivisions (e) and (f), no credit  
28 shall be approved by the board after the expiration of that  
29 period, unless a claim for credit is filed with the board  
30 within that period or unless the credit relates to a period  
31 for which a waiver is given pursuant to Section 43204.

32 (b) A refund may be approved by the board for any  
33 period for which a waiver is given under Section 43204 if  
34 a claim therefor is filed with the board before the  
35 expiration of the period agreed upon.

36 (c) Every claim for refund or credit shall be in writing  
37 and shall state the specific grounds upon which the claim  
38 is founded.

39 (d) No claim for refund of taxes paid under this part  
40 shall be accepted, considered, or approved by the board

1 if the claim is founded upon the grounds that the director  
2 has improperly or erroneously determined that any  
3 substance is a hazardous or extremely hazardous waste.  
4 Any appeal of a determination that a substance is a  
5 hazardous or extremely hazardous waste shall be made to  
6 the director.

7 (e) Notwithstanding subdivision (a), the board may  
8 within 90 days from the date of final board action or final  
9 judicial action, whichever is later, concerning liability for  
10 the fee imposed pursuant to Section 25205.5 of the Health  
11 and Safety Code, grant a refund or apply a credit  
12 pursuant to Section 43451 for any amount of tax, penalty,  
13 or interest that has been overpaid concerning a fee  
14 imposed pursuant to Section 25205.2 of the Health and  
15 Safety Code, if the taxpayer has paid or is being assessed  
16 a fee imposed pursuant to Section 25205.5 of the Health  
17 and Safety Code for the same period and site.

18 (f) Notwithstanding subdivision (a), the board may,  
19 within 90 days from the date of final board action or final  
20 judicial action, whichever is later, concerning liability for  
21 the fee imposed pursuant to Section 25205.2 of the Health  
22 and Safety Code, grant a refund or apply a credit  
23 pursuant to Section 43451 for any amount of tax, penalty,  
24 or interest that has been overpaid concerning a fee  
25 imposed pursuant to Section 25205.5 of the Health and  
26 Safety Code, if the taxpayer has paid or is being assessed  
27 a fee imposed pursuant to Section 25205.2 of the Health  
28 and Safety Code for the same period and site.

29 (g) Any overpayment of the fee imposed by Section  
30 25174.1 of the Health and Safety Code by a person  
31 submitting hazardous waste for disposal to a hazardous  
32 waste facility at which hazardous wastes are disposed who  
33 is required to collect the fee shall be credited or refunded  
34 by the state to the person who submitted the hazardous  
35 waste for disposal. However, if the facility has paid the  
36 amount to the board and establishes to the satisfaction of  
37 the board that it has not collected the amount from the  
38 person submitting the hazardous waste for disposal or has  
39 refunded the amount to that person, the overpayment  
40 may be credited or refunded by the state to the facility.

1 SEC. 4. Section 43522 of the Revenue and Taxation  
2 Code is amended to read:

3 43522. (a) It is the intent of the Legislature that the  
4 State Board of Equalization, its staff, and the Attorney  
5 General pursue settlements as authorized under this  
6 section with respect to civil tax matters in dispute that are  
7 the subject of protests, appeals, or refund claims,  
8 consistent with a reasonable evaluation of the costs and  
9 risks associated with litigation of these matters.

10 (b) (1) Subject to paragraph (2), the executive  
11 director or chief counsel, if authorized by the executive  
12 director, of the board may recommend to the State Board  
13 of Equalization, itself, a settlement of any civil tax matter  
14 in dispute which arises under Section 105190 or 105310 of  
15 the Health and Safety Code.

16 (2) No recommendation of settlement shall be  
17 submitted to the board unless and until that  
18 recommendation has been submitted by the executive  
19 director or chief counsel to the Attorney General. Within  
20 30 days of receiving that recommendation, the Attorney  
21 General shall review the recommendation and advise, in  
22 writing, the executive director or chief counsel of the  
23 board of his or her conclusions as to whether the  
24 recommendation is reasonable from an overall  
25 perspective. The executive director or chief counsel shall,  
26 with each recommendation of settlement submitted to  
27 the board, also submit the Attorney General's written  
28 conclusions obtained pursuant to this paragraph.

29 (c) Whenever a reduction of tax in settlement in  
30 excess of five hundred dollars (\$500) is approved  
31 pursuant to this section, there shall be placed on file in the  
32 office of the executive director of the board a public  
33 record with respect to that settlement. The public record  
34 shall include all of the following information:

35 (1) The name or names of the taxpayers who are  
36 parties to the settlement.

37 (2) The total amount in dispute.

38 (3) The amount agreed to pursuant to the settlement.

39 (4) A summary of the reasons why the settlement is in  
40 the best interests of the State of California.



(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.

1 (h) This section shall apply only to civil tax matters in  
2 dispute on or after the effective date of the act adding this  
3 subdivision.

4 (i) The Legislature finds that it is essential for fiscal  
5 purposes that the settlement program authorized by this  
6 section be expeditiously implemented. Accordingly,  
7 Chapter 3.5 (commencing with Section 11340) of Part 1  
8 of Division 3 of Title 2 of the Government Code shall not  
9 apply to any determination, rule, notice, or guideline  
10 established or issued by the board in implementing and  
11 administering the settlement program authorized by this  
12 section.

13 SEC. 5. Section 50157 of the Revenue and Taxation  
14 Code is amended to read:

15 50157. All fees, interest, and penalties imposed, and all  
16 amounts of fees, required to be paid to the state pursuant  
17 to Section 50108 shall be paid to the board in the form of  
18 remittances payable to the State Board of Equalization of  
19 the State of California. The board shall transmit the  
20 payments to the Treasurer to be deposited in the  
21 Underground Storage Tank Cleanup Fund in the State  
22 Treasury.

23 SEC. 6. Section 60501 of the Revenue and Taxation  
24 Code is amended to read:

25 60501. Persons who have paid a tax for diesel fuel lost,  
26 sold as provided in paragraph (4) of subdivision (a), or  
27 used in a nontaxable use, other than on a farm for farming  
28 purposes or in an exempt bus operation, shall, except as  
29 otherwise provided in this part, be reimbursed and repaid  
30 the amount of the tax.

31 (a) A claim for refund with respect to diesel fuel is  
32 allowed under this section only if all of the following  
33 apply:

34 (1) Tax was imposed on the diesel fuel to which the  
35 claim relates.

36 (2) The claimant bought or produced the diesel fuel  
37 and did not sell or resell it in this state except as provided  
38 in paragraph (4) of subdivision (a).

39 (3) The claimant has filed a timely claim for refund  
40 that contains the information required under subdivision

(b) and the claim is supported by the original invoice showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public highway within a military

1 reservation, which highway is constructed or maintained  
2 by this state or any political subdivision thereof.

3 As used in this section, “military reservation” includes  
4 any establishment of the United States government or  
5 any agency thereof used by the armed forces of the  
6 United States for military, air, or naval operations,  
7 including research projects.

8 (F) Sold by a supplier to any consulate officer or  
9 consulate employee under circumstances which would  
10 have entitled the supplier to an exemption under  
11 paragraph (6) of subdivision (a) of Section 60100 if the  
12 supplier had sold the diesel fuel directly to the consulate  
13 officer or consulate employee.

14 (G) Lost in the ordinary course of handling,  
15 transportation, or storage.

16 (H) Sold by a person to the United States and its  
17 agencies and instrumentalities under circumstances that  
18 would have entitled that person to an exemption from the  
19 payment of diesel fuel tax under Section 60100 had that  
20 person been the supplier of this diesel fuel.

21 (I) Sold by a person to a train operator for use in a  
22 diesel-powered train or for other off-highway use under  
23 circumstances that would have entitled that person to an  
24 exemption from the payment of diesel fuel tax under  
25 Section 60100 had that person been the supplier of this  
26 diesel fuel.

27 (b) Each claim for refund under this section shall  
28 contain the following information with respect to all the  
29 diesel fuel covered by the claim:

30 (1) The name, address, telephone number, and permit  
31 number of the person that sold the diesel fuel to the  
32 claimant and the date of the purchase.

33 (2) A statement by the claimant that the diesel fuel  
34 covered by the claim did not contain visible evidence of  
35 dye.

36 (3) A statement, which may appear on the invoice or  
37 similar document, by the person that sold the diesel fuel  
38 to the claimant that the diesel fuel sold did not contain  
39 visible evidence of dye.

1 (4) The total amount of diesel fuel covered by the  
2 claim.

3 (5) The use made of the diesel fuel covered by the  
4 claim described by reference to specific categories listed  
5 in paragraph (4) of subdivision (a).

6 (6) If the diesel fuel covered by the claim was  
7 exported, a statement that the claimant has the proof of  
8 exportation.

9 (7) Evidence as prescribed by the board to support the  
10 use, export, sale, or loss. *For purposes of this paragraph,*  
11 *“evidence” includes a bill of lading or a fuel manifest.*

12 (c) Each claim for refund under this section shall be  
13 made on a form prescribed by the board and shall be filed  
14 for a calendar year. If, at the close of any of the first three  
15 quarters of the calendar year, more than seven hundred  
16 fifty dollars (\$750) is refundable under this section with  
17 respect to diesel fuel used or exported during that quarter  
18 or any prior quarter during the calendar year, and for  
19 which no other claim has been filed, a claim may be filed  
20 for the quarterly period. To facilitate the administration  
21 of this section, the board may require the filing of claims  
22 for refund for other than yearly periods.

23 SEC. 7. Section 60503 of the Revenue and Taxation  
24 Code is amended to read:

25 60503. (a) The certificate to be provided to the  
26 ultimate vendor consists of a statement that is signed  
27 under penalty of perjury by a person with authority to  
28 bind the buyer. A new certificate shall be given if any  
29 information in the current certificate changes. The  
30 certificate may be included as part of any business records  
31 normally used to document a sale. The certificate expires  
32 on the earliest of the following dates:

33 (1) The date one year after the effective date of the  
34 certificate.

35 (2) The date a new certificate is provided to the seller.

36 (b) An exemption certificate for diesel fuel used on a  
37 farm for farming purposes or for diesel fuel used in an

- 1 exempt bus operation shall contain that information and
- 2 be in the form as the board may prescribe.

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